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1 A. Yes.
 2 Q. What did you know about DMS before seeking their
 3 assistance on Mr. Kearney's claim?
 4 A. I did not know anything about them. They were
 5 recommended by the reinsurer.
 6 Q. Okay. Did you actually speak to the reinsurer about
 7 the recommendation?
 8 A. I think they may have discussed that with us that they
 9 would like for them to review that, and as I recall,
 10 we may have furnished the file to them for review, but
 11 other than that, I knew nothing about them.
 12 Q. How was it that Mr. Kearney's claim came up for
 13 discussion with the reinsurer and the need to have
 14 more eyes take a look at the claim?
 15 A. I believe the normal initiation in a situation like
 16 that is that the reinsurer on a periodic basis,
 17 sometimes once a year, would come through and they
 18 would review -- ask for and review certain claims --
 19 Q. Okay.
 20 A. -- some criteria that they may have as a reinsurer.
 21 They would ask for the files and review those, make
 22 recommendations and ask for our concurrence as to, you
 23 know, whether this was acceptable.
 24 Q. So they would perform somewhat of an audit function?
 25 A. Yes.

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1 Q. Was it the higher dollar claims that they would focus
 2 on?
 3 A. Perhaps it might be that or the length of time in
 4 which benefits are being paid or a lot of times just a
 5 follow-up as to maybe additional information might be
 6 needed. They had their own criteria which they didn't
 7 particularly discuss with us.
 8 Q. So is it your memory then that Employers Reinsurance
 9 came in and performed some general audit of some
 10 selected claim files and determined that the Kearney
 11 claim was one in which DMS's assistance may be of
 12 value?
 13 A. Yes.
 14 Q. Okay.
 15 A. And I recall that only because of the -- I believe the
 16 correspondence, which my major correspondence with
 17 Employers Re was sending them a copy of the bill from
 18 DMS because they were footing part of the bill. That
 19 was one of my major concerns as far as they were
 20 concerned.
 21 Q. Was DMS expensive?
 22 A. I do not recall what they charged.
 23 Q. Did you put those correspondence in the claim file or
 24 does that not go in the claim file?
 25 A. It should be in the claim file.

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1 Q. Okay. I haven't seen it, but maybe Mr. Ellis would be
 2 good enough to give me that later.
 3 So when Employers Reinsurance came to
 4 Greensboro to take a look at some of the claim files,
 5 do you recall a focused discussion with them about Mr.
 6 Kearney's claim?
 7 A. I do not.
 8 Q. Okay. Is it your sense that that's what happened,
 9 though?
 10 A. Yes, the fact that they were paying part of the charge
 11 for DMS leads me to believe that they are the ones
 12 that recommended it for review.
 13 Q. Did they have experienced claim type folks who
 14 actually looked at the policy and the riders and the
 15 information in the file?
 16 A. Yes.
 17 Q. Did they tell you when they audited Mr. Kearney's
 18 claim file that you had made a mistake?
 19 A. I do not recall that they did.
 20 Q. Okay. There's no record of that in the claim file?
 21 A. No.
 22 Q. No documents have been brought to your attention in
 23 the past two days that suggest that?
 24 A. No.
 25 Q. Correct?

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1 A. Yes, that's correct.
 2 Q. See, I always ask negative questions. So then
 3 ultimately you referred not just Mr. Kearney's claim
 4 but two other claims to DMS in 1997?
 5 A. I do not recall specifically any other references.
 6 Q. Mr. Shelton, I'm going to mark an exhibit which is the
 7 principal correspondence in the claim file that
 8 appears to have been directed to you or authored by
 9 you and it's maybe 30 or 40 pages. I'd like for you
 10 to kind of glance through the whole thing before I
 11 start going through those with you.
 12 MS. FARABOW: What's the exhibit number?
 13 MR. ROBERTS: Oh, I'm sorry. It will be 23.
 14 (Defendant's Exhibit No. 23 was marked for
 15 identification by Mr. Roberts.)
 16 Q. (Indicating)
 17 A. (Witness reviews document)
 18 Q. Okay. Thank you for taking the time to review that.
 19 I know it's a lot of material. But did you see that
 20 I've tried to put into chronological order the
 21 correspondence in the claims file that --
 22 A. Yes.
 23 Q. -- has your name on it somewhere or abouts?
 24 A. Yes.
 25 Q. Do you have any memory of any other correspondence you

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1 Q. Right. And what you're saying is applicable is the
2 maximum benefit period that's applicable for total
3 disability? What you're saying is, that's applicable
4 for residual disability, correct?
5 A. To age 65.
6 Q. Well, it's lifetime if you get disabled prior to 45,
7 correct?
8 A. It appears so.
9 Q. Okay. And that's the definition of maximum benefit
10 period you need to use for residual disability,
11 correct?
12 A. It appears that way.
13 Q. Okay. Let's talk about another example. The
14 definition of monthly benefit, if you can find it in
15 the policy on page 3.
16 A. I have it.
17 Q. Okay. It's the amount shown in the schedule or
18 one-thirtieth, et cetera, for a partial month?
19 A. Yes.
20 Q. It doesn't say anything about residual disability?
21 A. No.
22 Q. Is there a definition for the monthly benefit for
23 residual disability anywhere? To answer that
24 question, you're looking at the rider. Doesn't the
25 rider state that it's the amount shown on the

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1 schedule?
2 MR. ELLIS: Let him answer one question at a
3 time, and don't throw me the finger again.
4 MR. ROBERTS: What are you talking about?
5 A. Question again, please.
6 Q. The residual disability rider -- you went from the
7 policy and I asked you where is the residual
8 disability definition for monthly benefit, and you
9 turned to residual disability rider and it says
10 monthly benefit is the amount shown in the schedule,
11 right? Towards the bottom of the first column, the
12 residual disability rider, there's a paragraph that
13 says Residual Disability Monthly Benefit, do you see
14 that?
15 A. I'm looking at that.
16 Q. The sentence above that says "'Monthly Benefit' is the
17 amount shown in the schedule as such." That's the
18 language of the rider. Can you turn to -- we need
19 then to turn to the schedule to determine what the
20 residual disability monthly benefit definition is,
21 right?
22 A. The monthly benefit is the amount shown in the
23 schedule as such.
24 Q. Okay. So we went from the policy to the rider and the
25 rider tells us to go to the schedule. Let's go back

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1 to the schedule.
2 A. Okay.
3 Q. How is the monthly benefit for residual disability
4 defined on the schedule?
5 A. It is not.
6 Q. Well, it's defined under total disability and so you
7 must use it to determine what residual disability
8 monthly benefit is, correct?
9 A. But there's also a calculation that has to be done.
10 Q. Correct, for residual disability monthly benefit?
11 A. Yes.
12 Q. I'm talking about the term -- the paragraph above that
13 for the defined term "Monthly Benefit." That's what
14 we're talking about right now, okay? To determine
15 what that means in the context of residual disability,
16 the rider says look at the schedule?
17 A. Yes.
18 Q. Okay. And the schedule doesn't say anything about
19 monthly benefit residual disability; it only talks in
20 the context of total disability, right?
21 A. That's the way it appears, yes.
22 Q. Okay. So I've just pointed out for you three
23 examples: elimination period, maximum benefit period,
24 and monthly benefit. Those are three pretty important
25 aspects to a disability policy, right?

Page 25

1 A. Yes.
2 Q. Okay. With those three examples, there is no
3 definition -- independent residual disability
4 definition for those three items; rather the policy,
5 the rider, and the schedule all require that you use
6 the total disability definition for those items,
7 right?
8 A. It refers to the schedule which has those items there.
9 Q. In the context of total disability only, right?
10 A. Yes.
11 Q. Okay. Why is the waiver of premium different -- just
12 because the definition of waiver of premium says total
13 disability, where is it that says elimination period,
14 maximum benefit period, and monthly benefit all are
15 defined in terms of total disability but they apply to
16 residual disability -- where does it say that even
17 though those three apply to residual disability,
18 waiver of premium doesn't?
19 A. The increase in benefits on benefit provisions
20 requires that you receive benefits for total
21 disability for twelve months -- no, I'm sorry.
22 Q. We're talking about --
23 A. I'm looking at something else, I'm sorry.
24 Q. -- premium waiver. Where is it that Mr. Kearney was
25 advised that those three examples we just talked about

7 (Pages 22 to 25)

Jefferson-Pilot Insurance Company vs. Christopher L. Kearney
Harold SheltonC-1-02-479
5/7/2004

<p style="text-align: right;">Page 38</p> <p>1 or lined paper that's been --</p> <p>2 A. What number is that?</p> <p>3 Q. 2874, October 29, '97.</p> <p>4 A. Okay.</p> <p>5 Q. This is a letter you received or was sent to you the</p> <p>6 end of October '97 from a gentleman named Todd Ditmar.</p> <p>7 Do you understand him to have been a disability claim</p> <p>8 consultant at Disability Management Services?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. Did you have some regular contact with him in</p> <p>11 the '97, '98, '99 time frame?</p> <p>12 A. I believe I did.</p> <p>13 Q. Okay. You had referred to him three separate files:</p> <p>14 Mr. Kearney's file, Gregor Kohn's file, and Felia</p> <p>15 Rampersad's file, right?</p> <p>16 A. Yes.</p> <p>17 Q. And why did you refer Mr. Kohn and Ms. Rampersad's</p> <p>18 files to DMS for review?</p> <p>19 A. I do not recall.</p> <p>20 Q. You don't recall what the issues were related to those</p> <p>21 files?</p> <p>22 A. No, I do not.</p> <p>23 Q. Is Ms. Rampersad located in Florida?</p> <p>24 A. I don't recall.</p> <p>25 Q. Okay. Are those the two people's names who you</p>	<p style="text-align: right;">Page 40</p> <p>1 Q. Okay. You wrote it to the attention of John Anderson?</p> <p>2 A. Yeah.</p> <p>3 Q. Did you understand him to be an equity owner of DMS</p> <p>4 and head of the claims --</p> <p>5 A. Did not specifically know him. I'm sure I was advised</p> <p>6 by Employers Re to -- that's who I'd sent it to,</p> <p>7 because I -- you know, I did not know any of these</p> <p>8 folks at DMS.</p> <p>9 Q. Okay. Did you then subsequently have conversations</p> <p>10 with Mr. Anderson about Mr. Kearney's claim?</p> <p>11 A. I do not specifically remember any.</p> <p>12 Q. Okay. 2886 dated September 12, '97, the third</p> <p>13 paragraph, Todd Ditmar writes to you, "As Mr. Kearney</p> <p>14 has refused Jefferson-Pilot's request for an</p> <p>15 independent financial audit, we would request that you</p> <p>16 forward a copy of Mr. Kearney's policy to us so that</p> <p>17 we may have it reviewed by our legal counsel. It</p> <p>18 would seem that an audit would be the only true way to</p> <p>19 measure and objectify his reported loss of income."</p> <p>20 Mr. Kearney communicated to you there was a</p> <p>21 specific reason why he did not desire for</p> <p>22 Jefferson-Pilot or Jefferson-Pilot's agents to contact</p> <p>23 the people he worked for and tell them that he</p> <p>24 suffered from chronic severe depression, didn't he?</p> <p>25 A. I do not recall specifically, but I would think that</p>
<p style="text-align: right;">Page 39</p> <p>1 blacked out of 2892 or someone blacked out with 2892?</p> <p>2 It's July 8, '97, if you want to figure it out that</p> <p>3 way.</p> <p>4 A. Well, it's been blacked out. I don't know whether I</p> <p>5 did that or not.</p> <p>6 Q. Did you refer more than three claims to DMS in that</p> <p>7 summer '97 time frame?</p> <p>8 A. I do not recall.</p> <p>9 Q. In the second paragraph you write, "These are cases</p> <p>10 that you are going to investigate for us to see what</p> <p>11 can be done either to settle these in an equitable</p> <p>12 manner to both the reinsurer and to Jefferson-Pilot or</p> <p>13 to give us further advice on where to proceed."</p> <p>14 Did you ever suggest to DMS that they might</p> <p>15 want to think about settling or resolving them in an</p> <p>16 equitable manner to the policyholder?</p> <p>17 A. Well, I think -- this doesn't say that per se, but the</p> <p>18 intent would always be something that the insured</p> <p>19 is -- the policyholder is agreeable to and is</p> <p>20 equitable to everyone involved.</p> <p>21 Q. Did you have phone conversations with Mr. Anderson?</p> <p>22 This letter that you wrote on July 8, '97, is the</p> <p>23 first letter of any communication you had with DMS, I</p> <p>24 assume, correct?</p> <p>25 A. Apparently so.</p>	<p style="text-align: right;">Page 41</p> <p>1 would be a logical request.</p> <p>2 Q. Okay. And then Mr. Ditmar, he's someone you did have</p> <p>3 frequent communications with in the '97 --</p> <p>4 A. Apparently he was handling this particular case.</p> <p>5 Q. He worked for Mr. Anderson?</p> <p>6 A. Apparently.</p> <p>7 Q. Okay. He requested that you send him a copy of the</p> <p>8 policy so their lawyers could take a look at it to</p> <p>9 determine what the rights were, right?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. And then the next page dated September 18,</p> <p>12 1997, document 2880, you sent him the policy, right?</p> <p>13 A. Yes.</p> <p>14 Q. And if he did what he said he was going to do, he was</p> <p>15 going to have his lawyers at DMS who this is what they</p> <p>16 do, administer claims, determine what the rights are</p> <p>17 in the policy, right?</p> <p>18 A. Yes.</p> <p>19 Q. And Mr. Kearney's payments didn't change; this alleged</p> <p>20 error wasn't disclosed or discovered for four more</p> <p>21 years, right?</p> <p>22 A. Apparently.</p> <p>23 MR. ELLIS: If can we take a break so I can</p> <p>24 check out.</p> <p>25 MR. ROBERTS: Can we proceed while you're</p>

11 (Pages 38 to 41)

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<p>1 day?</p> <p>2 A. Very possibly. If everything is in order, it's just a</p> <p>3 matter of the examiner reviewing that and approving</p> <p>4 the payment and it could be within a day or two.</p> <p>5 Q. Do you date-stamp the receipt of the claim form or the</p> <p>6 supplemental statement?</p> <p>7 A. Yes.</p> <p>8 Q. They're all date-stamped?</p> <p>9 A. Yes.</p> <p>10 MR. ELLIS: Just for your information,</p> <p>11 Counsel, they date-stamp on the reverse side, which is</p> <p>12 why none of the copies of mine have them. They</p> <p>13 date-stamp their claims material on the reverse side.</p> <p>14 MR. ROBERTS: Were those produced?</p> <p>15 MR. ELLIS: Apparently it was never copied</p> <p>16 for either my copy of the claim file or yours. There</p> <p>17 were only one-sided copies and --</p> <p>18 MR. ROBERTS: Can something be undertaken to</p> <p>19 remedy that?</p> <p>20 MR. ELLIS: I can get the date-stamping for</p> <p>21 them if you like.</p> <p>22 MR. ROBERTS: Yes.</p> <p>23 Q. March 23, '98, which is a letter numbered 2956?</p> <p>24 A. Okay.</p> <p>25 Q. Now you're getting copies of letters that Mr. Kearney</p>	<p>1 DMS got involved to do that? You were performing</p> <p>2 other functions?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. Was there any kind of written agreement that</p> <p>5 set forth --</p> <p>6 A. I think the -- I would think that the agreement was</p> <p>7 probably with Employers Re.</p> <p>8 Q. Between DMS and Employers Re?</p> <p>9 A. Yes. That would just be my guess, because I don't</p> <p>10 remember any contract that we had with them. They</p> <p>11 just asked us to send these forms to them.</p> <p>12 MR. ROBERTS: I believe that's been requested</p> <p>13 in the 34 discovery. Bill, is it going to be</p> <p>14 produced?</p> <p>15 MR. ELLIS: I'm not aware of any.</p> <p>16 MR. ROBERTS: Okay. Well, will you see if it</p> <p>17 exists or not?</p> <p>18 MR. ELLIS: Sure.</p> <p>19 Q. Did anyone ever tell you there was a written agreement</p> <p>20 between --</p> <p>21 A. No. I just know that DMS billed us directly and I</p> <p>22 would send a copy over to Employers Re to get their</p> <p>23 part of the charge.</p> <p>24 Q. There was no reference to a contract in the invoice or</p> <p>25 anything?</p>
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<p>1 is dialoguing directly with DMS?</p> <p>2 A. Yes.</p> <p>3 Q. Was there a switch in the relationship at that point</p> <p>4 where he was dialoguing directly with them and just</p> <p>5 keeping you in the loop of comments?</p> <p>6 A. Mr. Kearney?</p> <p>7 Q. Right.</p> <p>8 A. I suspect at that point DMS had contacted him about</p> <p>9 whatever they were needing and he was just writing to</p> <p>10 them and then just keeping me informed.</p> <p>11 Q. Who was running the show on Kearney's claim from</p> <p>12 summer of '97 through the end of '99? Was it</p> <p>13 principally DMS or was it principally Jefferson-Pilot?</p> <p>14 A. No, we continued to make the payments. All they were</p> <p>15 doing was reviewing it.</p> <p>16 Q. You were getting the supplemental forms monthly,</p> <p>17 Jefferson-Pilot meaning you?</p> <p>18 A. Yes.</p> <p>19 Q. And Jefferson-Pilot was issuing the checks?</p> <p>20 A. That's correct.</p> <p>21 Q. But everything else was being taken care of by DMS?</p> <p>22 A. Well, I wouldn't say everything else. I think -- you</p> <p>23 know, they were doing a review. They were attempting</p> <p>24 to get additional information.</p> <p>25 Q. Okay. Your company wasn't engaged in doing that once</p>	<p>1 A. Not that I'm aware of.</p> <p>2 MR. ROBERTS: I'd like those as well.</p> <p>3 They're not in the claim file.</p> <p>4 MR. ELLIS: What's that?</p> <p>5 MR. ROBERTS: His transmittals to Employers</p> <p>6 Re with the invoices of DMS.</p> <p>7 Q. There's a fax transmittal that's turned sideways,</p> <p>8 April 23, '98, from you to Ditmar. Now, if Mr.</p> <p>9 Kearney's residual disability began prior to the age</p> <p>10 of 45 -- I think we talked about this earlier -- his</p> <p>11 maximum benefit period on the schedule is lifetime,</p> <p>12 correct?</p> <p>13 A. I believe that's correct.</p> <p>14 Q. And in this fax you represent that it's to age 65.</p> <p>15 Was the policy ambiguous on the point?</p> <p>16 A. I don't think it was. Many times -- you didn't go</p> <p>17 back and review the contract every time you got</p> <p>18 involved in the correspondence. Usually if it's a</p> <p>19 lifetime benefit, it would have been written on the</p> <p>20 claim form at the top and you may have just referenced</p> <p>21 that. I'm not sure about that claim form, but it may</p> <p>22 have indicated to age 65 and that's maybe where I got</p> <p>23 that.</p> <p>24 Q. Okay.</p> <p>25 A. But I'm not sure.</p>

14 (Pages 50 to 53)

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1 Q. Is JL Roberson qualified to examine these policies, in
2 your judgment?
3 A. Yes.
4 Q. Does he look at every single claim?
5 A. No.
6 Q. So if he looked at Kearney's claim, he would have done
7 it affirmatively to examine something, right?
8 A. Based on -- well, based on the amount of benefits.
9 Q. Okay. Mr. Kearney's claim was a lot, so he was
10 getting more attention than someone getting \$100 a
11 month, \$1,000 a month?
12 A. Well, it had to be approved by Mr. Roberson.
13 Q. Okay. But he actually wrote letters to Mr. Kearney,
14 too, are you mindful of that?
15 A. I'm not sure particularly what he did.
16 Q. Do you suspect that he wrote all the claimants that
17 filed disability claims, Vice President of the
18 company?
19 A. No, he did not.
20 Q. Mr. Ellis argued that reference in Exhibit 9, Bates
21 0962, where it says, "We are pay TD benefits, COLA
22 applies." Do you know who wrote that?
23 A. No, I don't.
24 Q. Do you know when it was written?
25 A. No.

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1 Q. Okay. Do you know what the reference to "We are pay
2 TD benefits" -- I mean, if someone is getting -- if
3 someone's loss in residual disability exceeds
4 75 percent, they get the total disability benefit,
5 right?
6 A. They get the total benefit.
7 Q. Thank you.
8 A. Disability -- total disability benefit.
9 Q. Thank you. Let's talk about a couple of other
10 matters. Now, Mr. Ellis says that it doesn't matter
11 that you use elimination period total disability
12 definition for residual, it doesn't matter that you
13 use maximum benefit period total disability definition
14 for residual, it doesn't matter that you use monthly
15 benefit total disability definition for residual. You
16 don't use it for waiver of premium. Well, let's take
17 another look at the policy. There's other issues in
18 the policy --
19 MR. ELLIS: I object to the speech, but --
20 Q. -- that aren't referenced in the residual disability
21 rider that must apply. Do you pay residual disability
22 benefits for self-inflicted wounds, intentionally
23 self-inflicted wounds?
24 A. Right off I don't know.
25 Q. Okay. Well, why don't you take a look at the residual

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1 disability rider and tell me if you see an exclusion
2 for intentional self-inflicted wounds.
3 A. I don't see it.
4 Q. Okay. But you don't think the policy permits residual
5 disability benefits for intentional self-inflicted
6 wounds, do you?
7 A. I'm not sure.
8 Q. They would be excluded just like they're excluded in
9 the core policy that was purchased, right?
10 A. I'm not sure right --
11 Q. Probably? Unclear? Ambiguous?
12 A. I'm just not sure.
13 Q. Okay. Let's go over another one.
14 A. I'm going to have to take a break right quick if it's
15 okay.
16 Q. Yes, sir, absolutely.
17 (Brief recess)
18 Q. I think we're back on the policy again, Mr. Shelton.
19 Page 3 -- actually page 4 excludes in the limitations
20 and exclusions provision --
21 A. Page 4, yes.
22 Q. Page 4, yes, sir.
23 A. Okay.
24 Q. -- excludes liability when injury is caused by some
25 war incident?

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1 A. Yes.
2 Q. Do you pay residual disability benefits for war-caused
3 disabilities?
4 A. Residual disability?
5 Q. Yeah.
6 A. I would say that we would not.
7 Q. Okay. Where does it say that in the residual
8 disability rider? Where is the specific reference to
9 that, if that's where we're going to draw the line?
10 A. I don't know.
11 Q. Is there a reference to that in the residual
12 disability rider?
13 A. I don't see it in this rider.
14 Q. How about normal pregnancy or resulting childbirth
15 that's excluded in the policy? If there's a residual
16 disability caused by pregnancy or childbirth, are
17 residual disability benefits payable?
18 A. I'm sorry, repeat that question, please.
19 Q. Are residual disabilities caused by pregnancy or
20 childbirth payable? I know that they're excluded
21 under total disability, but do you pay them if they
22 result in residual disability?
23 A. I'm not sure.
24 Q. The residual disability rider doesn't say either way,
25 correct?

23 (Pages 86 to 89)

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